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The First Session of the 95th Congress: Activities Relating to Foreign Relations and International Law†

In presenting his annual report on the session's Legislative Achievements, the new Majority Leader of the Senate, Sen. Robert C. Byrd, Jr. (D. W. Va.), mentioned no measures of international significance, taking note of a few energy-related measures such as deregulation of offshore gas wells and construction of a pipeline to carry Alaskan natural gas through Canada to the lower 48 states. The primary concern of the 95th Congress was energy, which occupied almost 30 percent of the total days in session. Only in the closing days of the session, when hearings began on the two Panama Canal Treaties, did international relations become a dominant theme. But the one recurring note of the session was that of human rights.

Members who assembled on January 4 were younger and less iconoclastic than those of the 94th Congress. For the first time in eight years they were united in the same political party with the President.

The Democratic Steering and Policy Committee recommended Rep. Clement J. Zablocki (D. Wis.) to be Chairman of the Committee on International Relations to succeed Thomas E. Morgan (D. Pa.), the long time chairman who retired at the close of the 94th Congress. Zablocki, a non-self-promoting member of the Committee since 1948, had sometimes rankled liberals by opposing such measures as a military assistance bill because the assistance to Israel was "excessive." He had sided with both Democratic and Republican administrations on Vietnam war policies, and was a sponsor of the 1973 War Power legislation.

Rep. Benjamin S. Rosenthal (D. N.Y.) attempted in vain to deny Zablocki the chairmanship by charging that he had opposed too many Democratic foreign policy positions and maintained highly suspect association with South Korean educational and cultural organizations.

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On January 11 hearings began on the nomination of Cyrus R. Vance, who had been second top man in the Defense Department, 1964-1967, to be Secretary of State. In his testimony, Mr. Vance said:

> We erred in trying to prop up a series of regimes that lacked popular support, in attempting to impose Western values in Asia, and misjudged the effectiveness of military power against guerrilla forces . . . We learned a number of lessons in Vietnam, and I am the wiser for it.

He asserted that in the future we must stand up for human rights without being interventionists, but that there are cases where national security is of overriding importance. Confirmation came on January 30.

Greater controversy arose with the nomination of Paul C. Warnke to be Director of the Arms Control and Disarmament Agency and Ambassador for the SALT talks. At hearings by the Foreign Relations Committee on February 8 and 9, Warnke was vigorously opposed by defense hard liners, especially Paul H. Nitze, former Deputy Secretary of Defense, and several members of the Armed Services Committee. Senator Robert P. Griffin (R. Mich.) asked how credible the nominee could be as a negotiator when he had publicly opposed many of the United States weapons systems that would be subject to any SALT agreement. The Armed Services Committee approved confirmation by a two to one margin; but, as it had no jurisdiction over the nomination took no formal position. The Foreign Relations Committee, on February 26, reported that Warnke was an excellent choice for both positions. After President Carter assured the doubtful senators that he personally would be closely involved in forming United States negotiating positions, the nomination was confirmed.

Some of the more important matters of concern to the Legislative branch in our foreign relations are considered below.

International Loans and Human Rights

Before the session convened, the Department of State sent to the House Committee on International Relations a package of reports on abuses of human rights in six nations. P.L. 94-329 provided that no security aid should be granted to governments which engage in "consistent patterns of gross violation of human rights by torture, cruel punishment, political repression and similar action." These reports dealt with Argentina, Haiti, Indonesia, Iran, Peru and the Philippines.

Two months later, on February 24, the list was extended to include Ethiopia, Angola and Uruguay. Four days later the Argentinian government accused the United States of interfering in its domestic affairs: "No state, regardless of ideology or power, can take upon itself the role of an international court of justice and interfere in the internal affairs of other countries."

The Senate debate on the international loan bill (H.R. 5262) began on June

14. This first of four pending foreign aid authorizations measures raised the question of how far we should go in insisting on observance of human rights in other countries. Senators James Abourezk (D. S.D.) and Mark O. Hatfield (R. Ore.) proposed an amendment directing United States officials of international loan banks to vote against proposed loans to countries violating human rights. In a letter to the late Senator Hubert H. Humphrey (D. Minn.), President Carter said, "I oppose it, because it will prove weak and ineffective. It would handicap our efforts to encourage human rights in other countries." The full Committee agreed, and took a less rigid approach. But it subsequently adopted an amendment by Senator Robert Dole (R. Kans.) instructing United States officials to vote against loans to Vietnam, Laos and Cambodia.

The bill would require the Export-Import Bank to consider the plight of victims of torture and political persecution in making loans. It also extends the operating authority of the Bank to September 30, 1978. The House bill contained a provision requesting the Bank to endeavor to obtain agreements with other nations to reduce government subsidies for export financing. Another provision required the Bank to notify the Congress of any loan financing the export of nuclear materials. All three provisions were approved, and the measure was cleared by Congress on October 14.

As finally enacted the bill provides a total of $5.125 billion for six international financial institutions. It instructs United States representatives to use their voice and vote to channel aid to projects which address the basic human needs of the people in recipient countries; and requires United States Executive Directors to consider several additional factors such as whether the country provides refuge for airplane hijackers, the extent of cooperation of a country in facilitating investigations of violations of human rights, United States action on bilateral assistance with human rights factors and whether a country has detonated a nuclear device or is not a party to the Treaty on Non-proliferation of Nuclear Weapons. (H.R. 5262; P.L. 95-118)

In a related measure, Congress, on October 19, cleared the fiscal 1978 foreign aid appropriation bill (H.R. 7797) which contained language directing United States officials of international banks to oppose loans for Vietnam and six other nations with bad human rights records. The House had voted in June to prohibit the use of United States funds for assisting Cuba, Laos, Cambodia, Angola, Mozambique and Uganda as well as Vietnam. But World Bank President Robert S. McNamara warned that the Bank could not accept contributions with political strings; and the Senate refused to agree to the restrictions. After the conferees failed to resolve the differences, President Carter met with congressional leaders and worked out a compromise whereby he promised to instruct United States officials of the banks to oppose, and to vote against, loans to the seven countries.

Rhodesian Chrome: The Byrd Amendment

In one of his first appearances before the Senate Foreign Relations Committee, Secretary of State Vance told the Committee that the "symbolic importance" of repealing the 1971 Byrd Amendment permitting United States trade with Rhodesia despite United Nations sanctions "cannot be overestimated."

On January 11, Congressman Andrew Young of Georgia introduced H.R. 1746 to amend the United Nations Participation Act of 1945 to halt the importation of Rhodesian chrome by nullifying the effect of Section 203 (the Byrd Amendment) of the Armed Servcies Appropriation Act of 1972 (P.L. 92-156). The amendment permitted the importation of strategic minerals from Rhodesia despite United Nations sanctions against trade, which the United States had supported in the Security Council, and by Executive Order 11419 of July 29, 1968. The bill authorizes the President to suspend the Act if he determines that it would encourage negotiations and further the peaceful transfer of the government of Rhodesia from minority to majority rule. The Administration's success in repealing the Byrd Amendment was due to two factors, one political, the other economic: First, the importance of giving the United States greater political influence to bring about majority rule in Southern Africa; and second, the chrome dependent stainless steel industry had announced that it no longer was dependent on Rhodesian chrome. H.R. 1746 was promptly cleared by both houses (P.L. 95-12) in time for an address by President Carter to the U.N.

Arab Boycott

After controversy extending through two Congresses, H.R. 5840 was passed with the principal purpose of prohibiting secondary and tertiary boycotts of Jewish firms by Arab countries. Amending the Export Administration Act, Title II of the bill seeks to prevent compliance with foreign boycotts; prohibits refusals to do business with blacklisted firms and boycotted friendly countries pursuant to foreign boycott demands; prohibits discrimination against any United States person on grounds of race, religion, sex or national origin in order to comply with a foreign boycott; prohibits United States firms from furnishing information about any person's race, religion, sex or national origin for foreign boycott enforcement purposes; and provides for public disclosure of requests to comply with foreign boycotts. The language of the bill was agreed upon after much give-and-take between Jewish groups, business executives, members of Congress and the White House. The final version, which was considerably less stringent than the measures approved by the Senate and the House in 1976, was the result of efforts to satisfy the Jewish groups and, at the same time, avoided disturbing American business interests in the Middle East. H.R. 5840 was cleared to the President on June 10, and became P.L. 95-52.

Fishery Conservation Zone Transition

Immediately upon convening, the Congress faced the necessity of dealing with the transition from the 12-mile fishing zone to the 200-mile limit which was to become effective on March 1, 1977. The 200-mile zone was established by the Fishery Conservation Zone Act. (P.L. 94-265)

H.J. Res. 240 proposed to given congressional approval to fishery agreements between the United States and Bulgaria, Romania, the Republic of China, the German Democratic Republic, the Union of Soviet Socialist Republics and Poland. The resolution provided that these agreements enter into effect upon the enactment of the resolution. It waives the sixty-day congressional review period, and limits to seven days the forty-five-day period for review and comment on application permits required of the Regional Fishery Management Councils. It also waived until May 1, 1977, the Northwest Atlantic Fisheries Act of 1950, met no obstacle and was cleared on February 10. (P.L. 95-6)

A similar measure (H.R. 3753) was introduced to approve fishing agreements with Japan, Spain, South Korea and the states of the European Economic Community (Iceland, France, Italy, Luxembourg, the United Kingdom, Denmark, Belgium, West Germany and the Netherlands). Only the Japanese agreement provoked controversy—a temporary arrangement to permit uninterrupted fishing while the Japanese Diet considered the standard five-year agreement entered into by the other countries. It also failed to include the specific recognition required by P.L. 94-265 of the authority of the United States to manage fishing within the 200-mile zone, a condition which required Diet approval. Unexpectedly, some members of the House disagreed vehemently with the State Department's action, arguing that the agreement had been watered down for political reasons. Rep. Don Young (R. Alaska) complained bitterly. "The State Department was playing politics . . . subjecting fisheries to the exigencies of foreign policy . . . we are dealing with fish . . . not automobiles." To show its displeasure, the House Subcommittee on Fisheries and Wildlife Conservation and the Environment held up approval until late on February 28, assuring that the legislation could not be cleared before the 200-mile limit became effective at midnight. Rep. Gerry E. Studds (D. Mass.) explained: "This is a symbolic act of consequence . . . at least the Congress has established unequivocally that the law is the law and will be enforced." The next day the Coast Guard reported that some one hundred Japanese vessels off our shores had stowed their nets to await passage of the bill. The full Merchant Marine Committee met early in the morning of March 1, favorably reported the bill, and it was promptly passed by both houses. (P.L. 95-3)

Foreign Bribes

After the Watergate special prosecutor uncovered several political slush funds concealed from the regular accounts of certain corporations, the Securities and Exchange Commission began an investigation of questionable overseas payments. The Commission discovered that many United States corporations had made payments to officials of foreign governments for the purpose of obtaining business. Investigations undertaken by two Senate Committees ultimately disclosed that more than 400 United States corporations had paid such bribes.

On December 7, Congress completed action on S. 305, amending the Securities Exchange Act of 1934 by prohibiting United States companies from making payments to foreign officials for the purpose of obtaining business. Final action came after the House conferees agreed to two major Senate provisions: first, a requirement that United States firms maintain accurate financial records, and second, that they disclose to the Securities and Exchange Commission the identity of any person holding more than 5 percent of the corporate stock. The Act contains detailed provisions regarding the accounting and asset management practices of the companies subject to SEC control. (P.L. 95-213)

Emergency International Economic Controls

On March 29, the Subcommittee on International Economic Policy and Trade of the House International Relations Committee began hearings on two bills introduced by Chairman Rep. Jonathan B. Bingham (D. N.Y.), H.R. 1560 and H.R. 2382. In opening, Chairman Bingham stated, referring to Section 5(b) of the Trading With the Enemy Act of 1917, as amended by the First War Powers Act of Dec. 18, 1941: "Although the vast powers conferred upon the President by the Act have been a source of controversy for years, it has never been given a thorough review by Congress." Outlining the issues to be aired, Chairman Bingham asked:

(1) Is the Trading With the Enemy Act an adequate authority for the imposition of trade embargoes in time of peace?

(2) Is the asset control authority of the T.W.E.A. adequate for regulation of private bank lending to the developing nations?

(3) Is the T.W.E.A. an adequate authority for transaction controls on foreign subsidiaries of United States companies?

(4) What procedures should be written into the law to insure a role for Congress in the exercise of authority as now provided by the T.W.E.A?

Both bills were incorporated during markup into H.R. 7738 which was favorably reported (H. Rep. 95-459), and passed the House on July 12. In the

Senate, after consideration by the Committee on Banking, Housing and Urban Affairs, the bill was reported with amendments (S. Rep. 95-466), followed by the agreement of both houses on December 15. (P.L. 95-223) The Act restricts the use of the regulatory authority of Section 5(b) of the T.W.E.A. to wartime with certain grandfather exceptions and grants authority to regulate certain categories of transactions in future emergencies. It also prescribes the procedure for its exercise, requiring the President to consult with the Congress prior to and during the exercise of emergency authority.

Treaties

During this session, the Senate gave its advice and consent to the ratification of the following five treaties:

The *Agreement with Canada Concerning Transit Pipelines* provides that pipelines carrying all forms of hydrocarbons, including crude oil, petroleum products, natural gas, petrochemical feed stocks and coal slurries owned by one country, across the territory of the other will be free from interference and discriminatory taxation; allows each party to impose proper regulations for pipeline safety and environmental protection; permits each nation to determine the route of pipelines within its own territory; and provides for arbitrating any disputes arising under the agreement. (Ex F. 95th-1st. Resolution of ratification agreed to August 3.)

The *Convention on International Civil Aviation* increases the membership of the Council of the International Civil Aviation Organization from thirty to thirty-eight contracting states. (Ex A 95th-1st. Resolution of ratification agreed to Sept. 20.)

A *Protocol to the Inter-American Treaty of Reciprocal Assistance* (*Rio Treaty*) reaffirms the principle that an "attack against one is an attack against all"; restricts its application and resultant obligations; and provides for the lifting of sanctions by a simple majority rather than by a two-thirds vote required for other decisions and recommendations by the Organ of Consultation. (Ex J. 94th-1st. Resolution of ratification agreed to July 19.)

The *Treaty with Canada on Execution of Penal Sentences* allows a convicted prisoner or youthful offender accused of an offense to be returned to his native country to serve the sentence imposed by the other country. It limits the repatriation arrangements to prisoners; (a) convicted of an offense which is criminal under the law of each country and is other than a political, military or immigration offense; (b) who have no pending appeals; (c) have at least six months more to serve; and (d) are not domiciliaries of the country where they are serving. The treaty requires the prisoner to initiate the transfer, makes the laws regarding parole and probation of the nation to which the transfer is

made applicable, provides that only the transferring state can grant a pardon or amnesty and protects against double jeopardy. (Ex H. 95th-1st Resolution of ratification agreed to July 19.)

The *Treaty with Mexico on Execution of Penal Sentences* has substantially the same provisions as the Canadian-United States treaty except that a category of "mentally ill" persons is added to "youthful offenders" as eligible for transfer; and provides that the country holding the prisoner must initiate the transfer which can be only with the consent of the person to be transferred (Ex D 95th-1st. Resolution of ratification agreed to July 21.)